

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTHUR LEE CLARK, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54123

FILED

DEC 04 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY Angela
DEPUTY CLERK

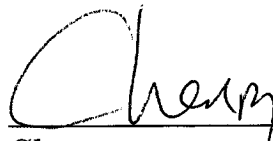
ORDER OF AFFIRMANCE

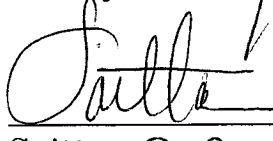
This is an appeal from a judgment of conviction, pursuant to a guilty plea, of driving under the influence. First Judicial District Court, Carson City; James E. Wilson, Judge. The district court sentenced appellant Arthur Lee Clark, Jr., to a term of 28 to 72 months in prison.

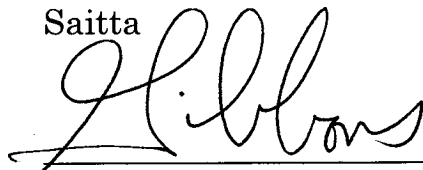
Clark's sole contention on appeal is that the prosecutor breached the plea agreement during sentencing by mentioning Clark's prior DUI convictions and calling two witnesses to testify regarding the instant offense. Having considered the parties' arguments and reviewed the record, we conclude that the prosecutor did not breach the plea agreement. In particular, the prosecutor recommended a sentence consistent with the plea agreement and was not precluded by the plea agreement from arguing and presenting testimony in support of that recommendation. See Sullivan v. State, 115 Nev. 383, 389, 990 P.2d 1258, 1261-62 (1999). And unlike the situation in Kluttz v. Warden, 99 Nev. 681, 669 P.2d 244 (1983), nothing in the prosecutor's comments explicitly or implicitly repudiated the plea agreement in this case. See also Sullivan, 115 Nev. at 389-90, 990 P.2d at 1262. Accordingly, Clark has not demonstrated plain error with respect to the prosecutor's unobjected-to

conduct at sentencing. See Puckett v. United States, 129 S. Ct. 1423 (2009). Having considered Clark's claim and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.¹


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. James E. Wilson, District Judge
State Public Defender/Carson City
Attorney General Catherine Cortez Masto/Carson City
Carson City District Attorney
Carson City Clerk

¹We note that while the fast track statement includes the information identified in NRAP 3C(e)(1)(B), it does not substantially comply with Form 6 of the Appendix of Forms to the NRAP as required by NRAP 3C(e)(1)(A). Form 6 sets forth 25 items to be addressed in the fast track statement, including information in addition to that specifically listed in NRAP 3C(e)(1)(B).